

EXHIBIT E

Andy Snowden

From: Jennifer Cook
Sent: Friday, April 20, 2018 7:06 PM
To: 'Lee.Balefsky@Klinespecter.com'; 'Michelle.Tiger@Klinespecter.com'; 'Tom.Kline@Klinespecter.com'
Cc: Ashley Stubbs; Marc Treadway; Walter Higgs
Subject: Line & Spector - Ethicon, Inc., Pelvic Repair System Products Liability Action MDL No. 2327 – Wave 8 Pathology [IWOV-ButlerSnow.FID7473325]
Attachments: Kline & Spector Plaintiffs - Wave 8 Pathology Letter -- No Preservation Information_41862833_1.PDF; Draft Motion to Preclude Pathology_41862869_1.PDF

Counsel,

Please see the attached correspondence from Ashley Stubbs.

Sincerely,

Jennifer E. Cook
Paralegal
Butler Snow LLP

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April 20, 2018

Via Mail and E-mail: Lee.Balefsky@Klinespecter.com; Michelle.Tiger@Klinespecter.com;
Tom.Kline@Klinespecter.com

Lee B. Balefsky
Michelle L. Tiger
Thomas R. Kline
Kline & Specter
1525 Locust Street,
Philadelphia, Pennsylvania 19102

Re: Ethicon, Inc., Pelvic Repair System Products Liability Action
MDL No. 2327 – Wave 8 Pathology

Dear Counsel:

As you are aware, my firm represents Ethicon Inc. and Johnson & Johnson in the Ethicon MDL litigation. I write to request the information regarding explanted specimens in your Wave 8 cases that Plaintiffs are required to provide Ethicon pursuant to PTO-121 and PTO-190. If you fail to provide this information and remedy your non-compliance with the requirements in PTO-190, Ethicon will be forced to file the enclosed motion.

As you know, PTO-121 requires the preservation of explanted mesh materials and PTO-190 sets out a protocol for the preservation and testing of explanted mesh. Plaintiffs are required by PTO-190 to provide Ethicon with information regarding available pathology specimens. In addition, Plaintiffs are required to send preservation notices to explanting healthcare facilities, copying counsel for Ethicon. PTO-190 also requires plaintiffs to utilize Steelgate, Inc. for the storage of pathology specimens.

Despite the requirements of PTOs-121 and -190, we have received no information about pathology specimens, including no record of preservation letters being sent, for the following of your plaintiffs:

Alisha Suarez
Case No. 2:14cv29091
Angela Dent
Case No. 2:14cv27262
Arlene Nix
Case No. 2:13cv06574
Barbara Leder
Case No. 2:13cv29512

Alta Loague
Case No. 2:13cv30754
Anita M. Kohn
Case No. 2:14cv28501
Barbara Burton
Case No. 2:13cv22539
Barbara L. Hull
Case No. 2:14cv26340

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Barbara R. Haizlip	Bonnie Laderbush
Case No. 2:15cv03306	Case No. 2:13cv24258
Brenda Shaffer	Brenda J. Sinkovich
Case No. 2:13cv07769	Case No. 2:15cv01062
Carlene Minzel	Carol S. Young
Case No. 2:13cv08274	Case No. 2:14cv27926
Carol S. Vitale	Carolann Silvia
Case No. 2:14cv29254	Case No. 2:14cv00058
Carolyn Foley	Cathy A. Russell
Case No. 2:15cv01064	Case No. 2:15cv03305
Celia O'Fallon	Chari Hoover
Case No. 2:14cv30122	Case No. 2:15cv07107
Cherie Templin	Cindy Brooks
Case No. 2:13cv10620	Case No. 2:13cv22692
Collette Bagsby	Corliss Fowler
Case No. 2:13cv06860	Case No. 2:15cv11996
Cynthia Thompson	Dana Endicott
Case No. 2:13cv10656	Case No. 2:15cv02656
Darlene Wildfong	Deborah Baca
Case No. 2:14cv01388	Case No. 2:14cv28542
Debra Berube	Debra M. Metcalf
Case No. 2:15cv07126	Case No. 2:14cv28533
Delphia Plott	Denise Post
Case No. 2:15cv04301	Case No. 2:15cv07109
Deryn Dwyer	Diane Lalumiere
Case No. 2:13cv25026	Case No. 2:13cv29509
Donna Spadafore	Donna B. Robins
Case No. 2:15cv00928	Case No. 2:15cv05209
Virginia Carver	Eileen Langowsky
Case No. 2:13cv05122	Case No. 2:13cv09185
Evelyn Jones	Gail Cannon
Case No. 2:15cv00701	Case No. 2:14cv29621
Gail Musewicz	Glenda Emerick
Case No. 2:14cv27281	Case No. 2:14cv16802
Glenda Sheaffer	Hilda Jones
Case No. 2:14cv29117	Case No. 2:13cv07246
Jacqueline Ahner	Janeen Smith
Case No. 2:13cv09790	Case No. 2:14cv01378
Janice B. Grubbs	Jennifer Gardner
Case No. 2:13cv05120	Case No. 2:13cv03724
Jennifer M. Houillon	Jill D. Johnson
Case No. 2:13cv10030	Case No. 2:13cv28793
Johnetta Bradley	Joyce Wessel
Case No. 2:15cv04398	Case No. 2:14cv01383
Judy Hembree	Judy Martin
Case No. 2:15cv01597	Case No. 2:13cv02883

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Karen M. Hanna	Kathryn Erwin
Case No. 2:13cv06214	Case No. 2:15cv00703
Katrina Nixon	Kristen Minor
Case No. 2:16cv02467	Case No. 2:15cv02394
LaDonna Haviland	Laurie Gergino
Case No. 2:13 cv29779	Case No. 2:14cv28538
Wendy Jung	Lilyan Hoy
Case No. 2:15cv03317	Case No. 2:15cv08089
Linda Boulette	Loretta Brown
Case No. 2:13cv07247	Case No. 2:15cv07520
Lori Illjes	Lynnyce Moore
Case No. 2:15cv05910	Case No. 2:13cv22695
Mariquita R. Santistevan	Marquette Hales
Case No. 2:15cv02875	Case No. 2:13cv27185
Mary Glaze	Mary Rambeau
Case No. 2:15cv04397	Case No. 2:15cv05842
Mary Sue Newton	Maxine Parker
Case No. 2:13cv11092	Case No. 2:13cv03184
Monica Granillo	Nancy Bauer
Case No. 2:13cv06575	Case No. 2:15cv12751
Nancy Ruf	Nancy Ottersbach
Case No. 2:15cv13302	Case No. 2:13cv09729
Naomi Jacobson	Nicole Williams
Case No. 2:14cv29128	Case No. 2:15cv16176
Norma Smith	Pamela Peterson
Case No. 2:14cv29428	Case No. 2:14cv30125
Pattie Scott	Paulada Linder
Case No. 2:15cv07113	Case No. 2:13cv11087
Peggy Bryant	Peggy Pooley
Case No. 2:15cv04369	Case No. 2:13cv08270
Rebecca Sharp	Regina Thompson
Case No. 2:15cv00696	Case No. 2:12cv09074
Renee J. MacLeod	Rita Carey
Case No. 2:13cv10608	Case No. 2:15cv11909
Rosemary Toliver	Sarah Lampron
Case No. 2:15cv00932	Case No. 2:15cv02493
Serita Capes	Sharon Murphy
Case No. 2:13cv06571	Case No. 2:15cv13839
Sharyne Anderson	Sheryl Gaughan
Case No. 2:15cv11910	Case No. 2:15cv14349
Stefanie Rutherford	Sue Bell
Case No. 2:15cv01066	Case No. 2:15cv00708
Sue May	Susan Casperson
Case No. 2:13cv29781	Case No. 2:13cv25272
Susan Long	Susie Chester
Case No. 2:15cv01063	Case No. 2:14cv28544

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Tamara Searl
Case No. 2:14cv00064
Terrill Cagle
Case No. 2:15cv01768
Theresa L. Martinez
Case No. 2:15cv02881
Veronica Slusher
Case No. 2:13cv10633

Teresa Tobin
Case No. 2:14cv29130
Theresa Walz
Case No. 2:15cv04396
Vanessa Dates
Case No. 2:15cv11333

Please provide us with the required information for each of your Wave 8 cases listed above. This should include but is not limited to the surgery date and whether the explanted specimen is a gross specimen, tissue block, and/or histology slides. Further, please provide us with details regarding the whereabouts of the explanted specimens. To the extent any gross specimens, tissue blocks, and/or slides are available, division and/or apportionment of the specimens must be arranged between the parties immediately, following the procedure outlined in PTO-190.

If you do not provide Ethicon with the requested information within seven (7) days of the date of this letter, Ethicon will be forced to file the attached motion relating to pathology and materials evidence. Your anticipated cooperation is greatly appreciated.

Sincerely,

BUTLER SNOW LLP



ASHLEY STUBBS

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

IN RE ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION	Master File No. 2:12-MD-02327 MDL 2327
THIS DOCUMENT RELATES TO: ALL CASES	JOSEPH R. GOODWIN U.S. DISTRICT JUDGE

**DEFENDANTS' MOTION TO PRECLUDE EVIDENCE OR ARGUMENT RELATING
TO PATHOLOGY AND DEGRADATION CLAIMS BASED ON CERTAIN
PLAINTIFFS' FAILURE TO COMPLY WITH PTO #121 AND PTO #190**

Defendants, Ethicon, Inc. and Johnson & Johnson ("Ethicon"), move for an order precluding certain Plaintiffs from offering evidence or argument relating to pathology and/or claims that Ethicon's mesh degrades based on Plaintiffs' failure to comply with PTO #121 and PTO #190.

PLAINTIFFS' DUTY TO PRESERVE PATHOLOGY

On June 17, 2014, Magistrate Judge Cheryl Eifert entered PTO #121 which requires that Plaintiffs "take reasonable steps to preserve their explanted mesh material." *See Exhibit A.* These steps included notifying their counsel of any planned or completed surgery involving the removal of mesh material; notifying their health care provider of the duty to preserve explanted mesh material; and taking any necessary steps to facilitate preservation of the explanted mesh until it could be delivered to a third-party repository. Judge Eifert "reject[ed] Plaintiffs' contention that, for convenience sake, the duty to preserve explanted mesh should be triggered only when a case is selected for trial preparation." PTO #121, p. 5. The Court ordered the parties to negotiate a pathology protocol to govern the preservation, storage, and division of

explanted materials. The parties did this.

On August 12, 2015, Judge Eifert entered PTO #190 which provided Plaintiffs with specific instructions on the preservation of explanted materials. *See Exhibit B.* Per PTO #190, when Plaintiff's counsel learns of a potential revision/explant surgery after the date the surgery occurred, Plaintiffs' counsel must provide a Past Surgery preservation notice to the facility and copy Ethicon's attorneys on this correspondence. When Plaintiffs' counsel learns of a Plaintiff's potential revision/explant surgery before the scheduled date of surgery, Plaintiffs' counsel must timely provide a Future Surgery preservation notice to the facility and copy Ethicon's attorneys. Once the preservation notice has been sent, Steelgate, Inc.—the designated third-party repository—is responsible for arranging shipment of the materials to its facility.

To the extent that pathology materials had already been requested or were in possession of Plaintiffs or their representatives at the time PTO #190 was entered, Plaintiffs were required to provide Ethicon with a detailed inventory of the materials already obtained within forty-five (45) days of the entry of the Order. Plaintiffs were further required, within sixty (60) days of the entry of the Order, to transfer such materials for storage at Steelgate. Once Plaintiffs provide the preservation letters to Steelgate and enter into a service agreement with Steelgate, Steelgate actively seeks out the available pathology on behalf of the Plaintiffs.

CERTAIN PLAINTIFFS HAVE NOT COMPLIED WITH PTO #121 AND PTO #190

Certain plaintiffs have failed to meet their obligations under these Orders by not providing preservation notices for each of Plaintiffs' revision/explant procedures, by not timely transferring pathology materials to Steelgate for storage, and/or by failing to provide Ethicon with any information regarding the status of explanted materials.

As a result of Plaintiffs' failure to follow the Court's pretrial orders, Steelgate has not

received a preservation request in over 600 active Wave 8 cases that involve at least one mesh revision/explant procedure. Consequently, neither Steelgate—who long ago should have possessed the pathology materials had Plaintiffs fulfilled their duties—nor Ethicon’s attorneys can confirm whether pathology exists from Plaintiffs’ revision procedures. In some cases, Plaintiffs have not even taken the initial step of entering into a service agreement with Steelgate so that Steelgate may confirm what materials may exist at the healthcare facilities. Attached as Exhibit C is email correspondence from Steelgate confirming the cases in which Steelgate has either not received a preservation request or in which Plaintiffs’ firm has not entered into a services agreement with Steelgate.

PATHOLOGY-RELATED EVIDENCE AND ARGUMENTS AND DEGRADATION
CLAIMS SHOULD BE PRECLUDED

The parties agreed in PTO #190 that “[m]aterials related to explanted meshes are potentially unique and important evidence given the claims in cases involving surgical mesh.” PTO #190, para. 1. There is no excuse for Plaintiffs’ failure to comply with PTO #190. PTO #190 has been in effect since 2015 and provides clear and detailed instructions on how Plaintiffs should preserve pathology materials, and importantly, what information they must provide to Ethicon along the way. Plaintiffs’ non-compliance has prejudiced Ethicon. Ethicon is unable to confirm whether all relevant pathology materials exist because Plaintiffs’ have either not sent preservation requests, not provided Ethicon with any of the required information about available pathology, or have not even taken the first step of entering into a services agreement with Steelgate so that Steelgate could locate the materials on behalf of the Plaintiffs and obtain it for storage.

With less than two months until Plaintiff expert disclosures are due in Wave 8, the parties no longer have sufficient time to locate the specimens, transfer the specimens to Steelgate, divide

the materials, transfer each parties' portion to their experts, analyze and test the materials, and draft expert reports. Ethicon has been left to repeatedly hound Plaintiffs, to little or no avail, for information about explanted materials the Plaintiffs were required to provide to Ethicon long ago. Ethicon therefore requests that Plaintiffs be precluded from offering any pathology-related or materials-related evidence or argument, including claims regarding mesh degradation, in all cases in which Plaintiffs have failed to comply with this Courts' Orders governing pathology preservation.

Respectfully submitted,

Susan M. Robinson (W.Va. Bar #5169)
THOMAS COMBS & SPANN, PLLC
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Suite 1380 (25301)
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Charleston, WV 25338
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Counsel for Defendants
Ethicon, Inc. and Johnson & Johnson

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

IN RE ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION	Master File No. 2:12-MD-02327 MDL 2327
THIS DOCUMENT RELATES TO: ALL CASES	JOSEPH R. GOODWIN U.S. DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that on _____, 2018, I electronically filed this document with the clerk of the court using the CM/ECF system, which will send notification of this filing to CM/ECF participants registered to receive service in this MDL.

Susan M. Robinson (W.Va. Bar #5169)
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Suite 1380 (25301)
P.O. Box 3824
Charleston, WV 25338
(304) 414-1800
srobinson@tcspllc.com

Andy Snowden

From: Balefsky, Lee <Lee.Balefsky@KlineSpecter.com>
Sent: Monday, April 23, 2018 12:59 PM
To: Ashley Stubbs
Cc: Jennifer Cook; Marc Treadway; Walter Higgs; Andy Snowden; Zasada, Michelle
Subject: Re: Line & Spector - Ethicon, Inc., Pelvic Repair System Products Liability Action MDL No. 2327 – Wave 8 Pathology [IWOV-ButlerSnow.FID7473325]

I'll speak to my staff tomorrow and get back to you

Sent from my iPad

On Apr 23, 2018, at 1:56 PM, Ashley Stubbs <Ashley.Stubbs@butlersnow.com> wrote:

Lee:

We have to have this information in order to meet the court's deadlines. If you have no response then we will file our motion.

Thanks,
Ashley

Ashley Nader Stubbs
Butler Snow LLP

D: (601) 985-4572 | F: (601) 985-4500
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Ashley.Stubbs@butlersnow.com | [vCard](#) | [Bio](#)

[Twitter](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

From: Balefsky, Lee [<mailto:Lee.Balefsky@KlineSpecter.com>]
Sent: Friday, April 20, 2018 9:15 PM
To: Jennifer Cook
Cc: Ashley Stubbs; Marc Treadway; Walter Higgs
Subject: Re: Line & Spector - Ethicon, Inc., Pelvic Repair System Products Liability Action MDL No. 2327 – Wave 8 Pathology [IWOV-ButlerSnow.FID7473325]

This is ridiculous

Sent from my iPhone

On Apr 20, 2018, at 8:05 PM, Jennifer Cook <Jennifer.Cook@butlersnow.com> wrote:

Counsel,

Please see the attached correspondence from Ashley Stubbs.

Sincerely,

Jennifer E. Cook

Paralegal

Butler Snow LLP

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<Kline & Spector Plaintiffs - Wave 8 Pathology Letter -- No Preservation Information_41862833_1.PDF>

<Draft Motion to Preclude Pathology_41862869_1.PDF>

Andy Snowden

From: Gomez, Christopher <chris.gomez@klinespecter.com>
Sent: Thursday, April 26, 2018 1:59 PM
To: Andy Snowden
Cc: Ashley Stubbs
Subject: Re: call

Thanks Andy.

Sent from my iPhone

On Apr 26, 2018, at 2:53 PM, Andy Snowden <Andy.Snowden@butlersnow.com> wrote:

Chris,

We have discussed your request for an additional two weeks to provide us with information relating to mesh specimens in your Wave 8 cases identified in Ashley's letter. Given the deadlines in this wave, we cannot agree to your request and we plan to file our motion. If you provide the requested information in the 14 days before your response to our motion is due, we will withdraw the motion or the portions of the motion no longer at issue.

Thanks,
Andy

From: Gomez, Christopher [<mailto:chris.gomez@klinespecter.com>]
Sent: Thursday, April 26, 2018 12:32 PM
To: Ashley Stubbs
Cc: Andy Snowden
Subject: RE: call

Hello Andy:

Have you had a chance to discuss my request.

Thanks

Chris

From: Gomez, Christopher
Sent: Wednesday, April 25, 2018 10:11 AM
To: Ashley Stubbs <Ashley.Stubbs@butlersnow.com>
Cc: Andy Snowden <Andy.Snowden@butlersnow.com>
Subject: RE: call

Hi Andy

Can you give me a call when you get the chance

Christopher A. Gomez
Kline & Specter, P.C.
1525 Locust Street
18th Floor
Philadelphia, PA 19102
T: 215-772-0428
chris.gomez@klinespecter.com
www.klinespecter.com

From: Ashley Stubbs <Ashley.Stubbs@butlersnow.com>
Sent: Wednesday, April 25, 2018 10:09 AM
To: Gomez, Christopher <Chris.Gomez@klinespecter.com>
Cc: Andy Snowden <Andy.Snowden@butlersnow.com>
Subject: Re: call

Chris:

My partner Andy called you re this issue. I've copied him here while I am out of the office on depositions.

Thanks,
Ashley

Sent from my iPhone

On Apr 25, 2018, at 9:00 AM, Gomez, Christopher <Chris.Gomez@klinespecter.com> wrote:

Hi Ashley

Please give me a call.. much appreciated.

From: Gomez, Christopher
Sent: Tuesday, April 24, 2018 12:15 PM
To: Ashley Stubbs <Ashley.Stubbs@butlersnow.com>
Subject: call

Hi Ashley:

Can you give me a call to discuss your April 20 letter.

Thanks

Chris

Christopher A. Gomez
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